

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

FILED
CLERK, U.S. DISTRICT COURT
DISTRICT OF DELAWARE
2008 JUL 25 AM 8:50

SAFEWAY, INC.,	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	NO. 08C-02-460
	:	
LIBERTY MUTUAL INSURANCE	:	
COMPANY,	:	
	:	
Defendant.	:	

NOTICE OF REMOVAL

TO: CLERK OF THE COURT, UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE:

Defendant, Liberty Mutual Insurance Company, by and through its attorneys, Marshall, Dennehey, Warner, Coleman & Goggin, hereby files this Notice of Removal of this case from the Superior Court of Delaware, In and For New Castle County, where it is now pending, to the United States District Court for the District of Delaware on the basis of diversity jurisdiction, and in support thereof avers as follows:

1. Plaintiff, Safeway, Inc., commenced this action by filing a Complaint for Declaratory Judgment on February 29, 2008 in the Superior Court of Delaware, In and For New Castle County, docketed as C.A. No. 08C-02-483 (JOH). (A copy of Plaintiff's Praecipe, Complaint for Declaratory Judgment and Entry of Appearance, filed on February 29, 2008, is attached hereto and marked as Exhibit "A").

2. The Complaint was served upon the Delaware Insurance Commissioner on June 24, 2008.

3. Plaintiff's Complaint asserts a claim for breach of contract and seeks the Court's determination that Defendant be found to owe Plaintiff "the coverage" afforded under the applicable policy of insurance and that Defendant be ordered to reimburse Plaintiff its costs for defending the underlying civil action. (See Exhibit "A").

4. The Complaint states that Plaintiff, Safeway, Inc., is a company organized and existing under the laws of the State of Delaware, with its principal place of business located at M/S 10501, P.O. Box 29093, Phoenix, Arizona 85038-9093. (Exhibit "A", ¶ 1). Therefore, upon information and belief, Plaintiff is a citizen of the State of Delaware.

5. Defendant, Liberty Mutual Insurance Company, is a corporation organized and existing under the laws of the Commonwealth of Massachusetts, with its principal place of business located at 175 Berkeley Street, Boston, Massachusetts 02117.

6. Based upon the allegations of Plaintiff's Complaint, the amount in controversy in this action is in excess of Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interest and costs, as Plaintiff has demanded substantial damages for breach of contract, including, but not limited to, reimbursement for its costs of defending the underlying civil action, which is now pending in the Delaware Superior Court, In and For New Castle County as *Fagan v. Safeway, Inc.*, C.A. No. 06C-11-175 (JOH), and "the coverage" allegedly afforded under Commercial General Liability Policy No. TB2-131-503333-024, with liability limits of \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate. (Exhibit "A", ¶¶ 6,10 and Exhibit "A" thereto).

7. As such, this Honorable Court has jurisdiction pursuant to the provisions of 28 U.S.C. §1332 based upon the fact that there exists diversity of citizenship between the parties and the amount in controversy exceeds \$75,000.00.

8. The present lawsuit is accordingly removable from the state court to the United States District Court pursuant to 28 U.S.C. §§ 1441 and 1446.

9. This Notice of Removal has been filed within thirty (30) days after receipt by Defendant of the Complaint in accordance with 28 U.S.C. § 1446(b).

10. Written notice of the filing of this Notice of Removal has been given to the adverse party in accordance with 28 U.S.C. §1446(d) and as noted in the attached Certificate of Service.

11. Promptly after filing with this Court and with the assignment of a Civil Action Number, a copy of this Notice of this Removal will be filed with the Superior Court of Delaware, In and For New Castle County in accordance with 28 U.S.C. § 1446(d).

12. Copies of all process, pleadings and other Orders which have been received by Defendant in this action are filed herewith.

WHEREFORE, Defendant, Liberty Mutual Insurance Company, respectfully requests that it may effect the Removal of this action from the Superior Court of Delaware, In and For New Castle County to the United States District Court for the District of Delaware.

Respectfully submitted:

**MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN**

BY: /s Tracy A. Burleigh

**TRACY A. BURLEIGH, ESQUIRE
(DE I.D. No. 3609)
1220 North Market Street, 5th Floor
P.O. Box 8888
Wilmington, DE 19899
(302) 552-4304
Attorney for Defendant,
Liberty Mutual Insurance Company**

DATED: *July 24, 2008*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

FILED
CLERK, U.S. DISTRICT COURT
DISTRICT OF DELAWARE

2008 JUL 25 AM 8:51

SAFEWAY, INC.,

Plaintiff,

v.

LIBERTY MUTUAL INSURANCE
COMPANY,

Defendant.

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CIVIL ACTION

NO. 08-00000

AFFIDAVIT

I, TRACY A. BURLEIGH, ESQUIRE, being duly sworn according to law, depose and say that the facts set forth in the foregoing Notice of Removal are true and correct to the best of my knowledge, information and belief.

**MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN**

BY: /s Tracy A. Burleigh

**TRACY A. BURLEIGH, ESQUIRE
(DE I.D. No. 3609)
1220 North Market Street, 5th Floor
P.O. Box 8888
Wilmington, DE 19899
(302) 552-4304
Attorney for Defendant,
Liberty Mutual Insurance Company**

DATED: July 24, 2008

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

FILED
CLERK, U.S. DISTRICT COURT
DISTRICT OF DELAWARE
2008 JUL 25 AM 8:51

SAFEWAY, INC.,

Plaintiff,

v.

LIBERTY MUTUAL INSURANCE
COMPANY,

Defendant.

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CIVIL ACTION

NO.

CERTIFICATE OF SERVICE

I, Tracy A. Burleigh, Esquire, hereby certify that I have served two (2) true and correct copies of the foregoing Notice of Removal and Notice to the Prothonotary of New Castle County upon the following individual via United States Mail, First Class, postage pre-paid,:

R. Stokes Nolte, Esquire
Reilly, Janiczek & McDevitt
1010 N. Bancroft Parkway, Suite 21
Wilmington, DE 19805

**MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN**

BY: /s Tracy A. Burleigh

**TRACY A. BURLEIGH, ESQUIRE
(DE I.D. No. 3609)
1220 North Market Street, 5th Floor
P.O. Box 8888
Wilmington, DE 19899
(302) 552-4304
Attorney for Defendant,
Liberty Mutual Insurance Company**

DATED:

July 27, 2008

SUPERIOR COURT CIVIL CASE INFORMATION STATEMENT (CIS)

COUNTY: N K S

CIVIL ACTION NUMBER: _____

CIVIL CASE CODE: CDEJCIVIL CASE TYPE: Declaratory Judgment

(See Reverse Side for Code and Type)

<p>Caption:</p> <p><u>Safeway, Inc.</u></p> <p style="text-align: center;"><u>Plaintiffs,</u></p> <p style="text-align: center;">v.</p> <p><u>Liberty Mutual Insurance Co.</u></p> <p style="text-align: center;"><u>Defendants.</u></p>	<p>Name and Status of Party Filing Document: <u>Safeway, Inc.,</u></p> <p>Document Type: (e.g., Complaint, Answer with Counterclaim) <u>Complaint for Declaratory Judgment</u></p> <p>Non-Arbitration <u>XX</u> (Certificate of Value May Be Required)</p> <p>Arbitration ___ Mediation ___ Neutral Assessment ___</p> <p>Defendant (Circle One) ACCEPT REJECT</p> <p>Jury Demand <u>X</u> Yes _____ No</p> <p>Track Assignment Requested: (Circle One) EXPEDITED STANDARD COMPLEX</p>
<p>Attorney Name(s): <u>R. Stokes Nolte, Esq.</u></p> <p><u>2301</u> Attorney ID(s):</p> <p><u>Reilly Janiczek & McDevitt</u> Firm Name:</p> <p><u>1010 N. Bancroft Parkway, Suite 21</u> Address:</p> <p><u>Wilmington, DE 19805</u></p> <p><u>(302) 777-1700</u> Telephone Number:</p> <p><u>(302) 777-1705</u> Fax Number:</p> <p><u>RNolte@nb-de.com</u> E-Mail Address:</p>	<p>Identify any related cases now pending in the Superior Court by caption and civil action number including judge's initials <u>Fagan v. Safeway, CA. No.: 06C-11-175 (JOH)</u> Explain the relationship(s): <u>Defendant in this case, Safeway, is filing a Complaint for Declaratory Judgment against Liberty Mutual Ins. Co. for coverage in the Fagan v. Safeway case.</u></p> <p>Other unusual issues that affect case management:</p> <p>(If additional space is needed, please attach pages)</p>

THE PROTHONOTARY WILL NOT PROCESS THE COMPLAINT, ANSWER OR FIRST RESPONSIVE PLEADING IN THIS MATTER FOR SERVICE UNTIL THE CASE INFORMATION STATEMENT (CIS) IS FILED. THE FAILURE TO FILE THE CIS AND TO HAVE THE PLEADING PROCESSED FOR SERVICE MAY RESULT IN THE DISMISSAL OF THE COMPLAINT OR MAY RESULT IN THE ANSWER OR FIRST RESPONSIVE PLEADING BEING STRICKEN.

EXHIBIT

A

tabbles

EFiled: Feb 29 2008 2:16 PM

Transaction ID 18807325

Case No. 08C-02-483 JOH



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

SAFEWAY, INC.

Plaintiffs,

v.

LIBERTY MUTUAL INSURANCE CO.,

Defendant.

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C.A. NO.:

NON ARBITRATION

TRIAL BY JURY DEMANDED

COMPLAINT FOR DECLARATORY JUDGMENT

COMES NOW, Safeway, Inc., by and through its undersigned counsel, and brings this Complaint for certain declaratory relief against defendant, Liberty Mutual Insurance Co., and states as alleges as follows:

1. Safeway, Inc. is a company organized and existing under the laws of the State of Delaware, with its principle place of business located at Safeway, Inc. - M/S 10501, P.O. Box 29093, Phoenix, AZ 85038-9093. At all times relevant to this action, Safeway Inc. was authorized to business in the State of Delaware.
2. Liberty Mutual is a foreign insurance company licensed to do business in the State of Delaware, and may be served by serving the Delaware Insurance Commissioner.
3. Valerio's Produce, Inc. is a foreign corporation operating in the State of Delaware.
4. Frank Fagan is a Florida resident, having brought suit in the State of Delaware for personal injuries that occurred in this State . That suit now pending in this Court, know as *Fagan v. Safeway*, C.A. No.: 06C-11-175 (JOH).
5. On or about March 9, 2005, Frank Fagan, was an employee of Valerio's Produce, Inc.. Mr. Fagan was making a delivery of produce to the Safeway store, located at 1101

Governor's Place, Bear, DE 19701, when he alleges to have slipped and fallen. Frank Fagan has brought the above mentioned suit against Safeway, Inc.

6. As part of the vendor agreement between Valerio's and Safeway, Inc., Valerio's was required to have Safeway, Inc. named as an additional insured under its general liability policy. Valerio's, in fact, obtained insurance coverage through defendant, Liberty Mutual Insurance Co., which listed Safeway, Inc. as an additional insured. Pursuant to the declarations page of the Valerio policy, Policy Number TB2-131-503333-024, (Exhibit A), Safeway, Inc. was named as an additional insured under the Valerio policy.
7. As noted above, Frank Fagan filed a Complaint against Safeway, Inc., seeking damages arising out of the injuries he sustained. As a result, Safeway, Inc. has requested coverage for this liability claim under the liability coverage afforded through the Liberty Mutual policy, but same has been wrongfully denied.

COUNT I - BREACH

8. All allegations set forth in paragraphs 1 through 6 are incorporated herein as if set forth in full.
9. Defendant, Liberty Mutual Insurance Co., has wrongfully denied insurance coverage to Safeway, Inc. and is in breach of its contractual obligation pursuant to the policy of insurance.
10. Plaintiff has incurred substantial damages as a result of defendant's breach, including, but not limited to, costs of defense of the claim.

WHEREFORE, plaintiff demands that the Court determine that defendant be found to owe plaintiff the coverage afforded under the policy and that defendant be ordered to reimburse

Safeway, Inc. its costs of defending the Fagan suit to date.

/s/ R. Stokes Nolte

R. Stokes Nolte, Esquire
1010 N. Bancroft Parkway
Suite 21
Wilmington, DE 19805
(302) 777-1700
Attorney for Safeway, Inc

Date: 2/29/08

Liberty Mutual
Fire Insurance CompanyCOMMERCIAL GENERAL
LIABILITY DECLARATIONS

ACCOUNT 50 33 33	SUB-ACCT NO. 0000	Liberty Mutual Insurance Group/Boston					
POLICY NO. TB2-131-503333-024	TD/CD 42/5	SALES OFFICE WAYNE, PA	CODE 0300	SALES REPRESENTATIVE HODSON	CODE 7012	N/R 1	1 ST YR 2004

Item 1. Named Insured Valerio's Produce, Inc.

Address 2600 Richmond Road
Hatfield, PA 19440

The named insured is: Corporation

Business of named insured is: Fresh Fruits and Vegetables

Item 2. Policy Period	From	Mo. 03	Day 09	Year 2004	to	Mo. 03	Day 09	Year 2005
12:01 A.M., standard time at the address of the named insured as stated herein.								

Item 3. In return for the payment of the premium, and subject to all of the terms of this policy, we agree with you to provide the insurance as stated in this policy

LIMITS OF INSURANCE

EACH OCCURRENCE LIMIT	\$ 1,000,000	
DAMAGE TO PREMISES RENTED TO YOU LIMIT	\$ 300,000	Any one premises
MEDICAL EXPENSE LIMIT	\$ 10,000	Any one person
PERSONAL & ADVERTISING INJURY LIMIT	\$ 1,000,000	Any one person or organization
GENERAL AGGREGATE LIMIT	\$ 2,000,000	
PRODUCTS / COMPLETED OPERATIONS AGGREGATE LIMIT	\$ 1,000,000	
Deductible Endorsement Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		

TERRORISM RISK INSURANCE ACT \$ 100

TOTAL ADVANCE PREMIUM \$ 11,283

The premium for this policy is payable \$ in advance, \$ on first anniversary
and \$ on the second anniversary.

Audit Basis: 1 - At Expiration

The declarations are completed on the schedules designated Declarations Extension Schedules

These declarations, together with the Common Policy Conditions and Coverage Form(s) and any endorsement(s) complete the above numbered policy.

Forms and endorsements attached to this policy: See attached forms and endorsements schedule

This policy, including all endorsements issued herewith, is hereby countersigned by

*N*4N00*

Authorized Representative

Loc. Code	Typed	Periodic Payment	Rating Basis	Audit Basis	Home State	Pol. H. G.	Renewal of
	HP 03/30/2004	\$	NR	1	PA	S- <input type="checkbox"/>	New

GPO 4081 R3

EFiled: Feb 29 2008 2:16 PM EST

Transaction ID 18807325

Case No. 08C-02-483 JOH



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

SAFEWAY, INC.

Plaintiff,

v.

LIBERTY MUTUAL INSURANCE CO.,

Defendant.

C. A. NO.:

NON-ARBITRATION

TRIAL BY JURY OF 12 DEMANDED

TO: PROTHONOTARY

PLEASE ISSUE summons on Complaint for service by the Sheriff of Kent County by
serving the Delaware Insurance Commissioner pursuant to 18 Del.C. §525 as follows:

Liberty Mutual Insurance Company
c/o Insurance Commissioner Matt Denn
841 Silver Lake Boulevard
Dover, DE 19904

/s/ R. Stokes Nolte

R. Stokes Nolte, Esquire
De. State Bar I.D. No.: 2301
Reilly Janiczek & McDevitt
1010 N. Bancroft Parkway
Suite 21
Wilmington, DE 19805
(302) 777-1700
Attorney for plaintiff

Date: 2/29/08

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

SAFEWAY, INC.

Plaintiff,

v.

LIBERTY MUTUAL INSURANCE CO.,

Defendant.

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C. A. NO.:

NON-ARBITRATION

TRIAL BY JURY OF 12 DEMANDED

SUMMONS

**TO THE SHERIFF OF KENT COUNTY
THE STATE OF DELAWARE
YOU ARE COMMANDED:**

To summons the above named Defendant, Liberty Mutual Insurance Co., by serving same upon them at the Insurance Commissioner pursuant to 18 Del.C. §525 at his office, which is 841 Sliver Lake Boulevard, Dover, DE 19904, so that within 20 days after service hereof upon defendant, exclusive of the day of service, defendant shall serve upon R. Stokes Nolte, Esquire, plaintiff's attorney, whose address is Suite 21, 1010 N. Bancroft Parkway, Wilmington, DE 19805, an answer to the complaint.

To serve upon defendants a copy of hereof and the Complaint.

Dated: _____

Prothonotary

Per Deputy

TO THE ABOVE NAMED DEFENDANT:

In the case of your failure, within 20 days after service hereof upon you, exclusive of the day of service, to serve on plaintiff's attorney named above an answer to the complaint, judgement by default will be rendered against you for the relief demanded in the complaint.

Prothonotary

Per Deputy

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

SAFEWAY, INC.)	
)	C.A. NO.:
)	NON ARBITRATION CASE
Plaintiffs,)	JURY TRIAL DEMANDED
)	
v.)	
)	
LIBERTY MUTUAL INSURANCE CO.)	
)	
Defendant.)	

ENTRY OF APPEARANCE

PLEASE ENTER THE APPEARANCE of R. Stokes Nolte, Esquire on behalf of the
plaintiff, Safeway, Inc., in the above caption matter.

/s/ R. Stokes Nolte

R. Stokes Nolte, Esquire
1010 N. Bancroft Parkway
Suite 21
Wilmington, DE 19805
(302) 777-1700
Attorney for Safeway, Inc.

Date: 2/29/08

LexisNexis File & Serve Transaction Receipt

Transaction ID: 18807325
Submitted by: R Stokes Nolte, Reilly Janiczek & McDevitt PC
Authorized by: R Stokes Nolte, Reilly Janiczek & McDevitt PC
Authorize and file on: Feb 29 2008 2:16PM EST

Court: DE Superior Court-New Castle County
Case Class: Civil-Non Arbitration
Case Type: CDEJ - Declaratory Judgment
Case Name: Safeway, Inc. v. Liberty Mutual Insurance Co.

Transaction Option: Originating Event
Billing Reference: Fagan--dj action

Documents List**5 Document(s)****Attached Document, 1 Pages Document ID: 22566076**[PDF Format](#) | [Original Format](#)

Related Document ID: 22566077

Document Type:	Access:	Statutory Fee:	Linked:
Case Information Statement	Public	\$0.50	
Document title:			
Case Information Statement			

Originating Document, 3 Pages Document ID: 22566077[PDF Format](#) | [Original Format](#)

Document Type:	Access:	Statutory Fee:	Linked:
Complaint	Public	\$185.50	
Document title:			
Complaint for Declaratory Judgment			

Attached Document, 1 Pages Document ID: 22566078[PDF Format](#) | [Original Format](#)

Related Document ID: 22566077

Document Type:	Access:	Statutory Fee:	Linked:
Praecipe	Public	\$0.50	
Document title:			
Praecipe			

Attached Document, 1 Pages Document ID: 22566079[PDF Format](#) | [Original Format](#)

Related Document ID: 22566077

Document Type:	Access:	Statutory Fee:	Linked:
Summons	Public	\$0.50	
Document title:			
Summons			

Attached Document, 1 Pages Document ID: 22566080[PDF Format](#) | [Original Format](#)

Related Document ID: 22566077

Document Type:	Access:	Statutory Fee:	Linked:
Entry of Appearance	Public	\$0.50	
Document title:			
Entry of Appearance for R. Stokes Nolte			

[Close All](#)☐ **Sending Parties (1)**

Party	Party Type	Attorney	Firm	Attorney Type
Safeway, Inc.	Plaintiff	Nolte, R Stokes	Reilly Janiczek & McDevitt PC	Attorney in Charge

☐ **Case Parties**

Party	Party Type	Attorney	Firm	Attorney Type
Liberty Mutual Insurance Co.	Defendant	No Answer on File	Firm TBD	N/A
Safeway, Inc.	Plaintiff	Nolte, R Stokes	Reilly Janiczek & McDevitt PC	Attorney in Charge

Close



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ORIGINAL

JS-44 (Rev 11/04)

FILED

CIVIL COVER SHEET

03-460

The JS 44 civil cover sheet and the information contained herein do not constitute nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS 2008 JUL 25 AM 8:55 SAFEWAY, INC. (b) County of Residence of First Listed Plaintiff New Castle County, Delaware (EXCEPT IN U.S. PLAINTIFF CASES) (c) Attorneys (Firm Name, Address, and Telephone Number) R. Stokes Nolte, Esquire Reilly, Janiczek & McDevitt 1010 N. Bancroft Parkway, Suite 21, Wilmington, DE 19805 (302) 777-1700	DEFENDANTS LIBERTY MUTUAL INSURANCE COMPANY County of Residence of First Listed Defendant Boston, Massachusetts (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. Attorneys (If Known) Tracy A. Burleigh, Esquire Marshall, Dennehey, Warner, Coleman & Goggin 1220 North Market Street, 5th Floor, Wilmington, DE 19801 (302) 552-4304
---	--

II. BASIS OF JURISDICTION (Place an "X" in One Box Only) <input type="checkbox"/> 1. U.S. Government Plaintiff <input type="checkbox"/> 2. U.S. Government Defendant <input type="checkbox"/> 3. Federal Question (U.S. Government Not a Party) <input checked="" type="checkbox"/> 4. Diversity (Indicates Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place An "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only) <table style="width: 100%;"> <tr> <th></th> <th>PTF</th> <th>DEF</th> <th></th> <th>PTF</th> <th>DEF</th> </tr> <tr> <td>Citizen of This State</td> <td><input checked="" type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="checkbox"/> 5</td> <td><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen of Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Citizen of Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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Citizen of Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. NATURE OF SUIT (Place an "X" in One Box Only)					
CONTRACT	TORTS	FORFEITURE / PENALTY	BANKRUPTCY	OTHER STATUTES	
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits. <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 195 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent, Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing / Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities—Employment <input type="checkbox"/> 445 Amer. w/Disabilities—Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

V. ORIGIN (Place an "X" in One Box Only)							
<input type="checkbox"/> 1 Original Proceeding	<input checked="" type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another District (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment	

VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. §1332; 28 U.S.C. §1441 and §1446 Brief description of cause: Complaint for Declaratory Judgment and Breach of Contract
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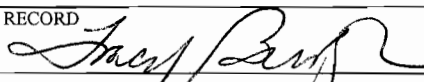
VII. REQUESTED IN COMPLAINT:	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$	CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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VIII. RELATED CASE(S) IF ANY	(See instructions) JUDGE Delaware Superior Court, New Castle County	DOCKET NUMBER	C.A. 08C-02-483 (JOH)
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DATE

7/24/08

SIGNATURE OF ATTORNEY OF RECORD



AO FORM 85 RECEIPT (REV. 9/04)

United States District Court for the District of Delaware

Civil Action No. 60

ACKNOWLEDGMENT
OF RECEIPT FOR AO FORM 85

NOTICE OF AVAILABILITY OF A
UNITED STATES MAGISTRATE JUDGE
TO EXERCISE JURISDICTION

I HEREBY ACKNOWLEDGE RECEIPT OF 1 COPIES OF AO FORM 85.

7/25/08
(Date forms issued)

Jessica O'Connor
(Signature of Party or their Representative)

Jessica O'Connor
(Printed name of Party or their Representative)

Note: Completed receipt will be filed in the Civil Action